



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. D. Richard Voges
County Attorney
Wilson County
Floresville, Texas

Dear Sir:

Opinion No. O-2142

Re: Does the fact that House Bill 432 amends only Section 1, Article 952, and also declares an emergency by Section 2, amend all of the sections of the original Article 952?

Your letter of March 29, 1940, requesting an opinion of this department on the above stated questions has been received.

Your letter reads as follows:

"Under House Bill No. 432, the Legislature attempted to amend Article 952 of the Penal Code.

"The caption of the bill provides that Section 1 of Article 952 of the Penal Code of Texas be amended so as to include Wilson County.

"The original Article 952 contains six sections providing, among other things, by Section 3 thereof a closed season.

"Will you please advise me whether or not the fact that House Bill No. 432 amends only Section 1 of Article 952 and also declaring an emergency by Section 2, would amend all of the sections of the original Article 952."

Article 952 of the Penal Code reads as follows:

"Sec. 1. Whoever shall barter or sell or offer for barter or sale any bass, perch, crappie, or catfish taken from any of the fresh waters of

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the counties of Comal, Guadalupe, Bexar, Kerr, Bandera and Medina, shall be fined not less than five nor more than fifty dollars.

"Sec. 2. Whoever shall use any dynamite, powder or other explosive in any of the fresh water streams of said counties, and shall destroy any fish thereby shall be fined not less than one hundred nor more than one thousand dollars, and may be imprisoned in jail not exceeding one year.

"Sec. 3. No person shall take or catch any fish in the fresh waters, creeks, lakes, bayous, pools, lagoons, or tanks in said counties by any other means than by the ordinary hook and line, or trot line or artificial baits, and no person shall place in the fresh waters, rivers, creeks, lakes, bayous, lagoons, ponds, or tanks in said counties any seine, net or other device or trap for taking or catching fish; any person may use a minnow seine which is not more than ten feet in length, and the meshes of which are not less than one-fourth inch square, for the purpose of catching minnows for bait. No person shall use the minnow seine herein permitted to take any fish other than minnows for bait.

"Sec. 4. No person, firm or corporation or their agents shall take, catch, seine, entrap by any means, or have in their possession any bass, perch, or crappie, or catfish taken from any fresh waters in said counties from the first of February to the first of May of any year.

"Sec. 5. If any person shall at any time, catch or take from any fresh water river, lake, bayou, lagoon, creek, pond, or other natural or artificial stream or pond of water within said counties by use of any means whatsoever any bass of less than eleven inches in length he shall immediately return same back into such water; and unnecessarily injuring such fish shall be deemed an offense under the provisions hereof. Each such fish shall constitute a separate offense,

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"Sec. 6. No person shall take from the fresh waters of said counties more than ten bass and ten crappie in any one day.

"Any person violating any provision of Sections 3, 4, 5 and 6 of this article shall be fined not less than ten nor more than fifty dollars."

"Section 1 of Article 952 of the Penal Code, as amended by Acts of the 46th Legislature, 1939, reads as follows:

"Section 1. Whoever shall barter or sell or offer for barter or sale any bass, perch, crappie, or catfish taken from any of the fresh water streams of the Counties of Comal, Guadalupe, Bexar, Kerr, Bandera, Medina, and Wilson, shall be fined not less than Five Dollars (\$5) nor more than Fifty Dollars (\$50)."

House Bill No. 432, Acts of the 46th Legislature, 1939, reads as follows:

"AN ACT to amend Section 1 of Article 952 of the Penal Code of Texas, by adding thereto Wilson County; and declaring an emergency.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. Fish and Game - Sale of Prohibited in Certain Counties.

"Section 1. Whoever shall barter or sell or offer for barter or sale any bass, perch, crappie, or catfish taken from any of the fresh water streams of the Counties of Comal, Guadalupe, Bexar, Kerr, Bandera, Medina, and Wilson, shall be fined not less than Five Dollars (\$5) nor more than Fifty Dollars (\$50)."

"Section 2. Emergency.

"The fact that under the present law the adjoining counties of Wilson have a closed season as provided in Article 952, and the fact that many persons from these adjoining counties go into Wilson County to fish, and the fact that it is necessary to place Wilson County in the same status as the adjoining counties create an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is

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hereby suspended, and this Act shall take effect and be enforced from and after its passage, and it is so enacted."

Section 35, Article 3 of the State Constitution reads as follows:

"No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed."

We quote from Texas Jurisprudence, Vol. 39, pages 123 and 124 as follows:

"The Legislature has undoubted power to amend or change existing statutory law, including that which is contained in a code or revision, in order 'to meet changing conditions.' An act may be amended during the session at which it was passed or at any subsequent session, by an enactment specifically setting forth its changed terms. And where an act is divided into numbered sections, one or more of them may be amended without interfering with others"

"One or more of the articles or sections of an act may be amended without re-enacting the entire statute. In such a case it is sufficient to re-enact and publish the section or sections amended. But an act purporting to amend several sections of the law, but setting out only one of them in full, is, of course, violative of the Constitution." Tex. Jur., Vol. 39, page 127.

We quote from Sutherland on Statutory Construction, page 169, as follows:

"In the amendment or revision of a statute two things are required: First, the title of the act amended or revised should be referred to; and secondly, the act as revised, or section as amended

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should be set forth and published at full length. ... It is not necessary in an amendatory statute to set forth the old act or section. It is intended that the law in force after the amendment shall be formulated and stated as it reads entire, and not in shreds...."

In the case of City of Laredo vs. Frishmuth, 196 SW 190, it is said:

"....In the case of a legislative act, where an article of the statute consists of numbered sections or subdivisions, each section dealing with the same matter, one or more sections may be amended, without interfering with other parts of the act...."

In view of the foregoing you are respectfully advised that it is the opinion of this department that it was the intention of the Legislature in amending Section 1 of Article 952 of the Penal Code and declaring an emergency by Section 2 of House Bill 432 that said act would amend all of the sections of the original Article 952, supra. Therefore, Article 952 of the Penal Code, as a whole, would be applicable to Wilson County.

Trusting that the foregoing fully answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

APPROVED APR 11, 1940

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[Signature]
FIRST ASSISTANT
ATTORNEY GENERAL

